

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 v.

12 Cr. 938 (SHS)

5 XIA PING WEN,

Curcio Hearing

6 Defendant.

7 -----x

8 New York, N.Y.
9 October 18, 2013
11:40 a.m.

10 Before:

11 HON. SIDNEY H. STEIN

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

17 ROBERT L. BOONE

BRIAN R. BLAIS

Assistant United States Attorneys

18 JOHN M. RODRIGUEZ

Attorney for Defendant

21 PATSY ONG

22 Interpreter (Mandarin)

1 (Case called)

2 MR. BOONE: Good morning, your Honor. Robert Boone
3 for the government. Here with me at counsel table is AUSA
4 Brian Blais.

5 THE COURT: Good morning.

6 MR. RODRIGUEZ: Good morning, your Honor. John M.
7 Rodriguez, 375 Park Avenue, New York, for Ms. Wen.

8 (Interpreter sworn)

9 THE CLERK: Please state your full name and spell your
10 last name for the record.

11 THE INTERPRETER: Patsy Ong, O-N-G.

12 THE COURT: Good morning. As I understand this
13 matter, Ms. Wen has pled guilty and is currently scheduled to
14 be sentenced on October 23rd at 3 p.m. I received a letter
15 from Mr. Rodriguez dated September 16th indicating that he had
16 been arrested and arraigned on a charge in Tompkins County with
17 two misdemeanor counts, in violation of Penal Law 190.25
18 subdivision (3), criminal impersonation in the second degree.
19 He says he is contesting those charges and he expects to be
20 exonerated.

21 I have a letter dated October 8th in response to that
22 letter from Mr. Blais saying that the allegation in that
23 Tompkins County misdemeanor charge is that Mr. Rodriguez passed
24 himself off as an Albany County assistant district attorney to
25 interview a juvenile delinquent at the Lansing residential

1 facility in Lansing, New York, who was a potential witness for
2 the prosecution of one of Mr. Rodriguez's clients in a criminal
3 case, and that Mr. Rodriguez was arraigned and released on an
4 appearance ticket.

5 Is all of that correct, government?

6 MR. BOONE: Yes, your Honor.

7 THE COURT: Mr. Rodriguez, is all of that correct?

8 MR. RODRIGUEZ: Yes, Judge, that is the letter I sent
9 and that is the letter, as I read it, from the prosecution.

10 THE COURT: What is the current status of those
11 misdemeanor charges?

12 MR. RODRIGUEZ: The case is ongoing. We have a court
13 date on November 11th of this year.

14 THE COURT: You have entered a plea of not guilty, I
15 take it?

16 MR. RODRIGUEZ: Absolutely.

17 THE COURT: Ms. Wen, let me ask you some questions.

18 MR. RODRIGUEZ: Excuse me. It's November 13th. I'm
19 sorry.

20 THE COURT: Right. Let me ask you some questions.
21 There is a potential for a conflict here, the conflict in Mr.
22 Rod's representation of you. How old are you, Ms. Wen?

23 THE DEFENDANT: 50.

24 THE COURT: Please stand. Do you understand the
25 interpreter?

1 THE DEFENDANT: Yes.

2 THE COURT: Have you taken any drugs, medicine or
3 pills, or consumed any alcoholic beverage in the past 24 hours?

4 THE DEFENDANT: No.

5 THE COURT: Are you feeling all right today?

6 THE DEFENDANT: Yes.

7 THE COURT: Mr. Rodriguez, do you have any doubt as to
8 Ms. Wen's competence?

9 MR. RODRIGUEZ: None at all, Judge.

10 THE COURT: Government?

11 MR. BOONE: No, your Honor.

12 THE COURT: Ms. Wen, I want to inform you that the
13 United States Constitution gives every defendant the right to
14 have effective assistance of counsel. That means that you have
15 the right to have your counsel only have your interests at
16 heart, nobody else's interests.

17 I have been informed that you heard that Mr. Rodriguez
18 has been charged with two misdemeanors in an upstate county.
19 That means he is personally adverse to the government, the
20 district attorney in Albany County, and he has an ongoing
21 criminal case against him.

22 The government here, that is, the United States
23 Attorney's office for the Southern District of New York, is a
24 different government entity. They really have no connections.
25 Two separate entities. The Albany County district attorney's

1 office represents the people of Albany County in state criminal
2 prosecutions. The United States Attorney's office here
3 represents the people of the United States in connection with
4 criminal and civil federal actions, not state actions. Do you
5 understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Nonetheless, there is some potential for
8 conflict here because Mr. Rodriguez, as I say, is adverse to a
9 governmental entity. It is theoretically possible that he may
10 put his interests ahead of yours in some way. I must say in
11 all directness it is considerably unlikely. That is really
12 ultimately a decision for you to make. I guess in theory he
13 could say to this U.S. Attorney, I don't care what happens to
14 Ms. Wen, just make sure I don't get convicted on that charge in
15 Albany County or something of that nature.

16 This is different than the usual conflict situation
17 which arises before trial. Here you have already pled guilty,
18 so the only thing left is your sentencing. Again, I guess it
19 is theoretically possible that he could say to this U.S.
20 Attorney, I'm not going to fight for a lower sentence for Ms.
21 Wen, just make sure I don't get convicted in Albany County.
22 That is a theoretical conflict.

23 The important point for you to know is that the
24 constitution gives you the right to an attorney whose interests
25 are only yours, that he is looking out only for you and not for

1 himself. Do you understand that?

2 THE DEFENDANT: I understand.

3 THE COURT: Government, is there any other way in
4 which you think there is potential here for a conflict? I
5 think in this instance the potential for conflict is relatively
6 remote. Government?

7 MR. BOONE: No, your Honor, we agree with exactly what
8 you just said. We have no relationship with the Albany
9 district attorney's office. I don't think there is any
10 suggestion that Mr. Rodriguez would try to curry favor with our
11 office in hopes of resolving that matter.

12 THE COURT: Mr. Rodriguez, do you see any way in which
13 this potential conflict can manifest itself?

14 MR. RODRIGUEZ: I don't see any at all, Judge. Just
15 for the record, it is not even Albany County. Albany County is
16 where I represented my client. It's in Lansing County, New
17 York, a small town.

18 THE COURT: Thank you.

19 I'm mistaken, Ms. Wen. The charges are pending in
20 Lansing County, not Albany County. But I need to make you
21 aware of that potential. You have to decide whether or not you
22 are willing to waive your right to conflict-free representation
23 and whether you want Mr. Rodriguez to continue to represent you
24 for sentencing next week.

25 If you want, I'll appoint an attorney for you to talk

1 to on this issue of whether you should have independent counsel
2 or not. If you don't want that, you can tell me what your
3 desires are. Would you like me to appoint a counsel free of
4 charge to you that you can discuss this issue with? Or not?

5 THE DEFENDANT: Yes, I would like a new attorney.

6 THE COURT: Do you want to speak to an attorney about
7 whether you should have a new attorney, or are you telling me
8 you want a new attorney?

9 THE DEFENDANT: I would like to have a new attorney
10 who would take charge of my case. I do not wish to discuss
11 with another attorney my present case.

12 THE COURT: You want a new attorney for this case, is
13 that what you are telling me?

14 THE DEFENDANT: I want a new attorney for my own case.
15 I don't want another attorney to discuss Mr. Rodriguez's case.

16 THE COURT: Mr. Rodriguez, are you CJA?

17 MR. RODRIGUEZ: Yes, I am.

18 THE COURT: I will grant the request of Ms. Wen and
19 appoint a new attorney to represent her. Ms. Wen, I am going
20 to give you a new attorney. The CJA attorney on duty today is
21 Colleen Quinn Brady.

22 Mr. Rodriguez, I'm asking you to turn the file over to
23 Ms. Brady today or Monday. Government, you should contact Ms.
24 Brady at 212-431-1354.

25 Ms. Wen, if you don't hear from Ms. Brady very

1 shortly, you should call her as well. Again, the number is
2 212-431-1354.

3 I will adjourn the sentencing here for six weeks.
4 Sentencing is December 5th at 4:30 p.m. I want any defense
5 submission by November 15th. I want any government response by
6 November 22nd. The sentencing is December 5 at 4:30 p.m.

7 Because Ms. Brady is the CJA attorney on duty today,
8 Mr. Rodriguez and Mr. Blais, you can call her on her cell
9 phone, I think it is the court's cell phone, I'm not really
10 sure, 646-315-2781, just for today. My deputy is going to call
11 her now. If she answers, I would like the parties to wait
12 until she comes up so that you can tell her exactly what's
13 happening and the date for the new sentencing and it can all be
14 done now. If she is not available by cell or in magistrate's
15 part, then contact her by phone today. Let's see if she is
16 available.

17 Ms. Wen, I have given you a new attorney and adjourned
18 your sentence.

19 THE DEFENDANT: Thank you, your Honor.

20 THE COURT: My deputy has reached her voicemail. She
21 will leave a message for Ms. Brady. Counsel, why don't you go
22 to magistrate's court and see if you can find her and call her
23 cell phone yourself. Try to get it done today if you can.

24 Thank you all.

25 (Adjourned)